

**After Recording Please Return to:**

**City of Issaquah  
Planning Department  
1775 12<sup>th</sup> Ave NW (PO Box 1307)  
Issaquah, WA 98027-1307**

---

## **CONSERVATION EASEMENT DEED**

1. Date and Parties. This Conservation Easement Deed (“Easement”) is dated, for reference purposes, the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_, by \_\_\_\_\_, as “Grantor”, and the **CITY OF ISSAQUAH**, a Washington municipal corporation, as “Grantee”.

2. General Recitals.

2.1. Grantor is the fee owner of certain real property located in King, County, Washington that is legally described in Exhibit A (hereafter “Protected Property”) attached hereto and by reference incorporated herein.

2.2. Grantee is authorized, pursuant to RCW 64.04.130 and RCW 84.34.210 to acquire an interest in real property for the purpose of preserving, maintaining, improving, restoring, limiting the future use of, and otherwise conserving, open space land.

2.3. Open space land includes any land, the preservation of which in its present use would (i) conserve and enhance natural or scenic resources, or (ii) protect streams or water supply, or (iii) promote conservation of soils and wetlands, or (iv) enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open space, or (v) enhance recreation opportunities, or (vi) preserve historic sites, or (vii) preserve visual quality along highway, road, and street corridors or scenic vistas, or (viii) retain in its natural state lands within or adjacent to the City of Issaquah that are at least one acre in size and will be open to public use for purposes defined by the City of Issaquah. For purposes of this Easement, the definition of Open space lands shall include Public Benefit Lands as defined in City of Issaquah Ordinance 752, the terms of which are incorporated herein by reference.

2.4. The Protected Property possesses one or more features of open space land, the permanent preservation and protection of which has value to Grantor, Grantee, the people of

the City of Issaquah, King County and the State of Washington. These values are referred to herein as the “Conservation Values” of the Protected Property.

2.5 The purpose of this conveyance is to permanently protect the Conservation Values of the Protected Property.

3. Consideration.

3.1 The parties hereto acknowledge there is good and valuable consideration for the assumption of the rights and responsibilities inherent in agreeing to preserve and protect the Conservation Values of the Protected Property.

4. Easement Conveyance

4.1 Grantor conveys and warrants to Grantee, and Grantee accepts, a conservation easement (the “Easement”) in perpetuity over the Protected Property on the terms and conditions set forth herein, exclusively for the purpose of conserving, preserving and protecting the Conservation Values of the Protected Property within the Conservation Zone, as defined in Exhibit C attached hereto and by reference incorporated herein.

5. Grantee’s Rights

5.1 The following rights are conveyed to Grantee:

5.1.1 To preserve and protect the Conservation Values of the Protected Property.

5.1.2 To allow persons or groups, including Grantee, to enter upon the Protected Property for scientific and educational purposes at mutually agreeable dates and times and upon not less than 10 days prior notice to Grantor;

5.1.3 To prevent any activity on or use of the Protected Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Protected Property that may be damaged by any inconsistent activity or use, pursuant to the remedies set forth in Section 8; and

5.1.4 Such other rights as are set forth in Exhibit B attached hereto and by reference incorporated herein.

6. Use Restrictions

Grantor’s use of the Protected Property is limited by the conditions set forth in Exhibit C attached hereto and by reference incorporated herein.

## 7. Reserved and Retained Rights and Responsibilities

7.1 Grantor reserves all rights accruing from ownership of the Protected Property, except for activities that are specifically restricted or prohibited herein.

7.2 Grantor retains responsibility for the following obligations:

7.2.1 Taxes. The Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Protected Property. Upon five days written notice to the Grantor, the Grantee shall have the right, but not the obligation, to pay any taxes or assessments levied against the Property in accordance with any bill, statement or estimate procured from the appropriate authority. If the Grantee ever pays any taxes or assessments levied against the Property, the Grantor shall reimburse the Grantee for the same, with interest until reimbursed at the maximum rate allowed by law. The Grantor shall reimburse the Grantee for these sums plus any reasonable attorneys fees and court costs incurred to collect such sums.

7.2.2 Upkeep, Maintenance, Costs, Legal Requirements, and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Protected Property, including the maintenance of adequate liability insurance coverage. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this Easement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Grantor shall keep the Protected Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

7.2.3 Remediation. If, at any time, there occurs, or has occurred, a release in, on, or about the Property of any hazardous substances, Grantors agree to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused solely by Grantee, in which case Grantee shall be responsible for such remediation.

7.2.4 Control. Nothing in this Easement shall be construed as giving rise to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Protected Property, or any of Grantor's activities on the Protected Property, or otherwise to become an owner or operator with respect to the Protected Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), or the Model Toxics Control Act, as amended ("MTCA").

7.2.5 Liability and Indemnification. Grantor hereby agrees to release, hold harmless, indemnify, and defend Grantee, its officers, employees and agents from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, judgments or administrative actions, including, without limitation, reasonable attorney's and consultant's fees, arising from or in any way connected with (1) injury to or death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Protected Property,

regardless of cause, except to the extent caused by the negligent acts or omissions of Grantee, its officers, employees or agents; (2) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation or requirement, including without limitation, CERCLA and MTCA, by any person other than Grantee, its officers, employees and agents; or (3) the presence or release in, on, from, or about the Protected Property, at any time, of any hazardous substances, unless caused solely by the Grantee.

## 8. Grantee's Remedies.

8.1 Notice of Failure. If the Grantee determines that Grantor is in violation of the terms of this Easement or that a violation is threatened, the Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the Purpose of this Easement, to restore the portion of the Protected Property so injured.

8.2 Grantor's Failure to Respond. The Grantee may bring an action as provided in subsection 8.3 if Grantor:

8.2.1. Fails to cure the violation within thirty (30) days after receipt of a notice of violation from the Grantee; or

8.2.2. Under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing the violation within the thirty (30) day period and fails to continue diligently to cure such violation until finally cured.

8.3 Grantee's Action. The Grantee may bring an action at law or in equity in a court having jurisdiction to enforce the terms of this Easement. This right shall include, but not be limited to:

8.3.1. Enjoining the violation, ex-parte as necessary, by temporary or permanent injunction;

8.3.2. Recovering any damages to which it may be entitled for violation of the terms of this Easement or for injury to any Conservation Values protected by this Easement, including damages for the loss of Conservation Values; and

8.3.3. Requiring the restoration of the Conservation Zone to the condition that existed prior to any such injury. The Grantee shall be entitled to a mandatory injunction, requiring restoration, even if the monetary value of the loss is less than the restoration cost, as the parties acknowledge that the diminution in monetary value is not an adequate remedy at law, unless both parties agree thereto.

8.4. Immediate Action Required. The notice provisions of sections 8.1 and 8.2 notwithstanding, if the Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Protected Property, the Grantee may pursue its remedies authorized by this Deed's provisions, without prior notice to Grantor or without waiting for the period provided for

cure to expire.

8.5. Nature of Remedy. The Grantee's rights under this section apply equally in the event of either actual or threatened violations of the terms of this Easement. The Grantee shall be entitled to the injunctive relief described in this section in addition to such other relief to which the Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The Grantee's remedies described, in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

8.6. Costs of Restoration. In the event the Grantee must enforce the terms of this Easement, the costs of restoration necessitated by acts or omissions of Grantor, its agents, employees, contractors, family members, invitees or licensees in violation of the terms of this Easement shall be borne by Grantor or those of its personal representatives, heirs, successors, or assigns, against whom a judgment is entered. In the event that the Grantee secures redress for an Easement violation without initiating or completing a judicial proceeding, the costs of such restoration shall be borne by Grantor or those of its personal representatives, heirs, successors, or assigns who are otherwise determined to be responsible for the unauthorized use or activity. If Grantor prevails in any proceeding initiated by the Grantee to enforce the terms of this Easement, Grantor's cost of suit, including attorney's fees, shall be borne by the Grantee.

8.7. The Grantee's Forbearance. The Grantee acknowledges its commitment to protect the Conservation Values associated with the Protected Property, including enforcement of the terms of this Easement. Any forbearance by the Grantee to exercise its rights under this Easement in the event of any breach of any terms of this Easement by Grantor shall not be deemed or construed to be a waiver by the Grantee of such term or of any right under this Easement. No delay or omission by the Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver. The exercise of any remedy by the County or a private party, as authorized by paragraph 10, shall not be deemed as a waiver of the Grantee's right to enforce the same, or a different right or remedy at a subsequent time.

8.8. Waiver of Certain Defenses. Grantor acknowledges that the Grantee and its successors and assigns have limited resources for monitoring compliance with the terms of this Easement. In recognition of this fact, Grantor hereby waives any technical defense it may have against an enforcement action undertaken by the Grantee or its successors or assigns based upon laches (e.g., delay by the Grantee in enforcing the terms of this Easement), estoppel (e.g., a claim by Grantor that, in reliance on a prior oral rather than written statement of the Grantee, it undertook a use or activity on the Protected Property deemed by the Grantee to be inconsistent with the Purpose of this Easement) or prescription.

8.9 Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle the Grantee to bring any action against Grantor to abate, correct, or

restore any condition on the Protected Property or to recover damages for any injury to or changes in the Protected Property resulting from causes beyond Grantor's control, including, without limitation, natural changes, fire, flood, storm, or earth movement, or from acts of trespassers, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes.

8.10. Estoppel Certificates. Upon request by Grantor, the Grantee shall within thirty (30) days execute and deliver to Grantor any document, including an estoppel certificate, that certifies Grantor's compliance with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement.

8.11. To enter upon the Protected Property at reasonable times in order to monitor Grantor's compliance with and otherwise enforce the terms of this Easement in accordance with Section 8; provided that, except in cases where Grantee determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Easement, such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not in any case unreasonably interfere with Grantor's quiet use and enjoyment of the Protected Property;

9. Enforcement by Private Citizens and King County.

9.1 King County and/or any resident of the City of Issaquah shall have the right, but not the obligation, to exercise Grantee's remedies set forth in paragraph 8 if the Grantee fails or refuses to enforce the use restrictions.

9.2 King County, and/or a City of Issaquah resident shall not have the authority to exercise this right without first giving the Grantee written notice that there is a violation of the use restriction, and requesting the City to exercise its enforcement authority within a reasonable period of time.

9.3. This grant of authority does not create a cause of action against the City for failure to enforce the use restrictions, or, a right to compel the City to enforce the use restrictions. King County, or any person exercising the right to seek a remedy as authorized herein, is deemed to have irrevocably waived any and all claims against the City for failing or refusing to enforce the use restrictions.

10. Grant in Perpetuity

This Easement shall be recorded in the records of King County, Washington and shall be a burden upon and shall run with the Protected Property in perpetuity and shall bind the Grantor, its successors and assigns forever. This Easement shall be incorporated by reference in any subsequent deed or other legal instrument, which conveys any interest in the Protected Property.

11. Exhibits. The following exhibits are attached hereto:

Exhibit A - - Legal Description for Protected Property

Exhibit B - - Grantee's Rights

Exhibit C - - Grantor's Permitted Uses

12. Written Notices.

12.1 All Notices required by this Agreement shall be in writing, signed by the sending party, and shall be considered properly delivered when personally delivered, when received by facsimile, or on the third day following mailing, postage prepaid, certified mail, return receipt requested, to:

Grantee: City Clerks Office  
City of Issaquah  
P.O. Box 1307  
Issaquah, WA 98027  
Fax: 425 837-3009

With a copy to: Wayne Tanaka  
Ogden, Murphy & Wallace Law  
2100 Westlake Center Tower,  
1601 5<sup>th</sup> Ave.  
Seattle, WA 98101-1686  
Fax: 206 447-0215

Grantor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12.2 Either party may modify the above notice delivery information by providing written notice to the other party at the address set forth above, or such subsequent address that has been properly provided in accordance with the paragraph's terms.

13. Public Access

No general public access to any portion of the Protected Property is conveyed by this Easement unless specifically referenced in the Exhibits attached hereto.

14. Interpretation

This Deed shall be interpreted under the laws of Washington, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.

15. Severability

If any provision of this Deed is found to be invalid, illegal or unenforceable, that finding shall not affect the validity, legality or enforceability of the remaining provisions, unless the remaining provisions cannot be construed in such a way as to protect any of the Conservation Values intended be protected by this Grant of Easement.

16. Acceptance

The Grantee hereby accepts the granting of this Conservation Easement Deed.

17. Signatures

The undersigned, by executing this document, are intending to bind themselves, if signing in their individual capacity, or the legal entity they represent, if signing in their official capacity.

GRANTOR: \_\_\_\_\_

BY: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

GRANTEE: CITY OF ISSAQUAH

BY: \_\_\_\_\_  
Ava Frisinger, Mayor

Attest:

By: \_\_\_\_\_  
Tina Eggers, City Clerk

Approved as to form:



By: Wayne Tanaka, City Attorney

STATE OF WASHINGTON )  
 )ss:  
COUNTY OF KING )

On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_, before me personally appeared \_\_\_\_\_, to me known to be the \_\_\_\_\_, of \_\_\_\_\_, the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument on behalf of the corporation and that the seal affixed is the seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal  
the day and year last above written.

Notary Public in and for the  
State of Washington  
Residing at \_\_\_\_\_  
My Commission Expires \_\_\_\_\_  
Printed Name: \_\_\_\_\_

STATE OF WASHINGTON )  
 )ss:  
COUNTY OF KING )

On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_, before me personally appeared \_\_\_\_\_, to me known to be the Mayor and City Clerk of the City of Issaquah, King County, Washington, the municipal corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument on behalf of the municipal corporation and that the seal affixed is the seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal  
the day and year last above written.

Notary Public in and for the  
State of Washington

Residing at \_\_\_\_\_  
My Commission Expires \_\_\_\_\_  
Printed Name: \_\_\_\_\_

STATE OF WASHINGTON }  
 } ss:  
COUNTY OF KING }

On this \_\_\_\_ day of \_\_\_\_\_, 200\_, before me, the undersigned, a Notary Public in and for the State of \_\_\_\_\_, duly commissioned and sworn personally appeared \_\_\_\_\_, to me known to be the individual described in and who executed the foregoing instrument, and acknowledged to me that she signed and sealed the said instrument as her free and voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Notary Public in and for the  
State of Washington  
Residing at \_\_\_\_\_  
My Commission Expires \_\_\_\_\_  
Printed Name: \_\_\_\_\_

STATE OF WASHINGTON }  
 } ss:  
COUNTY OF KING }

On this \_\_\_\_ day of \_\_\_\_\_, 200\_, before me, the undersigned, a Notary Public in and for the State of \_\_\_\_\_, duly commissioned and sworn personally appeared \_\_\_\_\_, to me known to be the individual described in and who executed the foregoing instrument, and acknowledged to me that she signed and sealed the said instrument as her free and voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Notary Public in and for the  
State of Washington  
Residing at \_\_\_\_\_  
My Commission Expires \_\_\_\_\_  
Printed Name: \_\_\_\_\_